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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

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5 JOSE MANUEL RODRIGUEZ,	Case No. 3:19-cv-00314-LRH-WGC
6 Petitioner,	ORDER
7 v.	
8 NEVADA, STATE OF, et al.,	
9 Respondents.	

10 Petitioner Jose Manual Rodriguez's 28 U.S.C. § 2254 habeas petition is before  
11 the court on his response to this court's order to show cause and file proof to  
12 demonstrate that the petition is not subject to dismissal as time-barred.

13 The Antiterrorism and Effective Death Penalty Act (AEDPA) imposes a one-year  
14 statute of limitations on the filing of federal habeas corpus petitions. 28 U.S.C. §  
15 2244(d). The one-year time limitation can run from the date on which a petitioner's  
16 judgment became final by conclusion of direct review, or the expiration of the time for  
17 seeking direct review. 28 U.S.C. § 2244(d)(1)(A). Further, a properly filed petition for  
18 state postconviction relief can toll the period of limitations. 28 U.S.C. § 2244(d)(2).

19 In his federal petition, Rodriguez states that the judgment of conviction he seeks  
20 to challenge—Case No. 89C091794-3—was entered on May 24, 1990 (ECF No. 1-1, pp.  
21 1). It appears that, following a bench warrant and a guilty plea agreement in the same  
22 criminal case, a judgment of conviction was entered on August 2, 2002 (see ECF No. 1,  
23 exh. E, p. 31 and case no. 3:19-cv-00117-HDM-CBC, ECF No. 3, n.1). Rodriguez did  
24 not appeal.

25 In February 2015, Rodriguez filed an appeal from a purported order “revoking  
26 parole.” In March 2015, the Nevada Supreme Court dismissed the appeal for lack of  
27 jurisdiction over an appeal from such an order. While Rodriguez states in his response  
28 to the show-cause order that he in fact had a jury trial, the state-court minutes he

1 includes indicate that he pleaded guilty. In any event, nothing in his response indicates  
2 that he took any action for about twelve years after he was convicted.

3 Rodriguez argues that his lack of English skills entitle him to equitable tolling of  
4 the one-year limitations period. However, the Nevada Supreme Court docket belies this  
5 claim as it reflects that from 2015 to 2018, he pursued multiple *pro se* proceedings in  
6 state district and appellate courts, including two state postconviction petitions and  
7 appeals. Moreover, many of the claims in this federal petition challenge the state-court  
8 holdings in those two state postconviction proceedings. Claims of error in state  
9 postconviction proceedings are not cognizable on federal habeas review, even when  
10 such claims are based on the federal constitution. *See, e.g., Franzen v. Brinkman*, 877  
11 F.2d 26 (9<sup>th</sup> Cir. 1989).

12 Accordingly, because Rodriguez has failed to demonstrate that this petition was  
13 timely filed or that he is entitled to equitable tolling of the time limitation, the petition is  
14 dismissed with prejudice as untimely.

15 Reasonable jurists would not find the court's conclusions to be debatable or  
16 wrong, and the court will not issue a certificate of appealability.

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18 **IT IS THEREFORE ORDERED** that the Clerk shall detach and electronically file  
19 the petition (ECF No. 1-1).

20 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** with prejudice as  
21 untimely.

22 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

23 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and  
24 close this case.

25  
26 DATED this 4th day of October, 2019.

27   
28 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE